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SUBJECT: Namibia: Human Rights Trends Pertaining to Sexual Orientation

REF: STATE 130765

¶1. (SBU) Legislation: Namibia has no legislation that criminalizes same-sex relationships and none is being contemplated that would target gays or lesbians. Article 10 of the Namibian constitution prohibits any form of discrimination. Sodomy -- defined as sexual intercourse between two males -- is a crime, although post contacts were not aware of any instances in which the sodomy law has been enforced. A specific provision against discrimination on the basis of sexual orientation was contained in the 1992 Labor Act. The revised 2007 Labor Act prohibits discrimination on the basis of sex, but the reference to sexual orientation was expunged. The Combating of Domestic Violence Act of 2003 extends protections only to persons in heterosexual relationships.

¶2. (SBU) (SBU) Judicial decisions: In one of the only relevant court decisions on this topic, the High Court in 1999 ordered the granting of permanent residence to a plaintiff who claimed that her application had been denied for several reasons, including her sexual orientation. In its ruling, the High Court recognized same-sex relationships as equivalent to heterosexual (married) relationships. On appeal by the Immigration Board, the Supreme Court set aside the High Court decision with regard to granting the plaintiff permanent residence. The Supreme Court also overturned the High Court's more liberal position that the plaintiff met the definition of spouse under Namibian law. The Supreme Court did however, order the government's immigration board to review its decision within 30 days; the board eventually granted the plaintiff residency.

¶3. (SBU) Political rhetoric: In the past, senior Namibian politicians have made disparaging remarks about homosexuality. Former President Sam Nujoma in particular is known for his intolerance of homosexuality. In 2001 he was quoted as saying "the Republic of Namibia does not allow homosexuality (or) lesbianism here." Former Minister of Home Affairs Jerry Ekandjo (currently Minister of Regional and Local Government) reportedly stated in 1998 that he intended to table anti-gay legislation in the National Assembly. This never happened, and there has been little discussion about homosexuality in the National Assembly.

¶4. (SBU) One of Namibia's leading advocates of gay and lesbian rights told us that her organization had felt very "under the gun" after the remarks described above. Since President Hifikepunye Pohamba's assumption of office in 2005, however, the situation has much improved, both because Pohamba is a political moderate and because he is friendlier to civil society and favors dialogue over confrontation, she said. One ongoing concern is that gay sex workers continue to be a major target of police harassment.

15. (SBU) Public attitudes: Although Namibia is a conservative society, public attitudes are becoming more tolerant, particularly in urban areas. The Rainbow Project NGO, formed in 1997, has done a great deal of education and advocacy work, and it seems to have had a positive impact. The effort has received strong support from most of the human rights community in Namibia, and a recent leader of the Namibian Council of Churches was very supportive of the Rainbow Project's efforts. In a positive sign of evolving public attitudes, most opposition political parties attended a forum organized in November 2009 by the Women Claiming Citizenship Campaign, an advocacy group for the rights of gay, lesbian, transgender, and bisexual Namibian citizens. Several of the political parties in attendance declared that human rights were for everyone, irrespective of their sexual orientation. Homosexuality remains a taboo in the rural areas, where gays and lesbians are often forced into heterosexual marriages and suffer violence at the hands of family members.

MATHIEU